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Searles Potash Lands

IN RE

California Trona Company's Patent Applications

Protest of Victor Barndt

TO VNU
ABSTRACT

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At Searles Lake, California, is the only commercial deposit of potash known to exist in the United States and it will probably prove to be the only important basis for an American potash industry. Much money has been expended by private parties and the Federal Government in the effort to develop other commercial sources of potash, entirely without success.

Developments and experimental work have established that Searles Lake can yield a large amount of potash as well as of soda and borax. It is strongly indicated that these minerals can be sold at moderate prices with ample profit to the producer. Consequently the property, or any reasonable portion of it, is very valuable.

Practically the entire property is in the possession of the California Trona Company, which is owned by the American Trona Corporation, which is principally financed and controlled by an English corporation, the Consolidated Goldfields of South Africa. The incidents leading to this condition have been the causes of the sensational "potash war", which since the winter of 1912-13 has been exploited in the Western press, and also of the numerous actions that have been or are pending in the State and Federal Courts of California.

This possession of the California Trona Company is based on a series of alleged locations which pretend to cover large areas (25,000 to 40,000 acres) including much more than the entire valuable deposit of 15,000 acres, more or less. Investigation has convinced my attorneys that most, if not all, of these alleged locations are fraudulent and void, and if any are not actually void they are voidable and should not be allowed. It would be a travesty on the rights of citizens of the United States to allow a foreign corporation by any perversion of the mining law and customs to obtain title by location to substantially all the national resources in potash, thereby establishing monopoly.

On February 1, 1915, I filed at the United States General Land Office a protest against the patent applications of the California Trona Company and requested that a public hearing be granted before a decision was reached. A copy of this protest was served on the California Trona Company.

We maintain that the California Trona Company has no right to patent; that no justification can be offered for this attempt of the foreign corporation to acquire a vast area of public mineral land, not by purchase, but by location made by its actual agents, however this agency may be obscured by the use of American subsidiary corporations. The fact that the land in question contains substantially all of the country's known resources in a necessary mineral, makes the matter of national importance.

It is true that the California Trona Company, or its foreign owners, have a strong case in equity because of money and effort expended to establish an American potash industry. We contend, however, that this equity will be fully recognized and all present and future investment rendered highly profitable without injury to the public, if the California Trona Company receive the first choice of Federal leases at Searles Lake. The pending leasing bill offers the only just and proper solution of the case, which is now apparent.

VICTOR BARNDT.

Philadelphia, Pa., February 10, 1915.

Washington, D. C., Feb. 1, 1915.

Baron Alfred von der Ropp,
American Trona Corporation,
Woolworth Building,
New York City.

Dear Baron von der Ropp:

I enclose a copy of a protest which I have filed today with the Commissioner of the General Land Office against the issuance of your patents at Searles Lake. This protest embodies the views expressed by us at the conference with Secretary Fisher, February 14, 1913, and in the opinion of our counsel which I handed you at that time. As you know, our counsel differ from yours as to your legal right to acquire the property by location.

We shall keep you informed of any future steps, it being our purposes to conduct this protest in all particulars quite openly and with full consideration for yourselves.

Respectfully yours,

(Signed) VICTOR BARNDT.

Eastern Address.

Care of E. E. Free,
1105 Madison Ave.,
Baltimore, Maryland.

IN THE UNITED STATES GENERAL LAND OFFICE,
WASHINGTON, D. C.

In the Matter of the Applications of
the California Trona Company, a
Corporation, for Mineral Patents
for the Trona Placer Claims. } PROTEST.

*To the Honorable Commissioner of the General Land Office
of the United States:*

As a citizen of the United States, familiar with the physical, legal and other features of the matter, and on behalf of myself and other citizens of the United States, I do object to and protest against the issuance and granting of patent to the California Trona Company for any lands and premises described as being Trona placer claims, situate at Searles Lake, San Bernardino County, California, on applications now filed or that may hereafter be filed in the United States Land Office at Independence, Inyo County, California.

At present three applications are filed.

The first application is for six association placer claims of 160 acres each, located during July, 1910, by C. E. Dolbear and seven others. Against this application an Adverse has been filed by contesting claimants, and the matter is now in the California Courts.

The second application is for one association placer claim of 160 acres located in July, 1910, by C. E. Dolbear and seven associates. No adverse claim covers any portion of this ground. The claims located by C. E. Dolbear and the same seven associates during July, 1910, comprise 257 association claims of 160 acres each, covering a total of more than 41,000 acres. All were conveyed to the California Trona Company immediately after location.

The third application is for four placer claims of 20 acres each located in May or June, 1912, by S. W. Austin, being a portion of 1392, more or less, 20 acre claims located by Austin during May and June, 1912, and by him conveyed to the California Trona Company on November 12, 1912.

No adverse claim covers any portion of this particular 80 acres.

The Austin locations are on lands embraced within the Dolbear locations, and include the entire known commercial deposit of potash, borax and soda at Searles Lake, excepting the small percentage embraced in lands patented to the San Bernardino Borax Mining Company.

Each of these three applications appears to be a test case intended to promote the attempt of the California Trona Company to obtain title to all the locations claimed by them and including substantially all of the known potash deposit at Searles Lake.

I base this protest upon the following grounds :

I—ATTEMPT TO ESTABLISH MONOPOLY.

Searles Lake is the only known commercial deposit of potash in the United States, and it seems probable that it will prove to be the only deposit existing in the United States or perhaps on the American Continent. To allow one party to obtain patent upon substantially all of this deposit will establish a dangerous monopoly in a necessary commodity.

It is of great and increasing importance to both our agricultural and chemical industries that an adequate supply of potash be produced and marketed at moderate prices within the United States.

A very large amount of money and effort has been expended during recent years by various private parties and by the Federal Government in the search for commercial sources of potash. I have been officially connected with much of this work and in touch with all of it, and would state that, excepting at Searles Lake, the search has been, so far, a complete failure.

If the present applications are allowed and patent is granted to the lands now applied for, the California Trona Company, by making additional separate applications for patent, could ultimately control substantially all of the potash deposit at Searles Lake and thereby control and monopolize the future potash industry of the United States.

I respectfully submit that the mineral laws and the practice of the General Land Office, as well as the

rules and customs of the mining districts of the United States, do not contemplate and never have contemplated that any one person could acquire by location an unlimited area of the public domain, especially if this area include substantially all of the known national resources in a necessary mineral. The attempt of the California Trona Company to accomplish this end is without precedent in the mining history of the United States. I submit that it is entirely without justification and that in justice to other citizens and to the welfare of the country, it should not be allowed. The laws of the United States provide that the public mineral lands shall be open to location and entry by all of the citizens of the United States. The attempted location by one party of large areas of mineral lands containing the entire known national resources in a valuable mineral would, if permitted, destroy the rights of other citizens to locate portions of these lands.

2—FAILURE TO MAKE DISCOVERY.

With the possible exception of a few bordering claims not of great value, no discovery of potash, borax or soda was made by C. E. Dolbear and his seven associates upon any of the 257 association claims when the locations were made in July, 1910, or prior to August 11, 1910, when the locations were transferred to the California Trona Company. Between August 11, 1910, and the Federal withdrawal of these lands on February 21, 1913, discovery was made upon a portion of these claims. But even the claims upon which discovery was made after transfer are invalid and void except as to 20 acres each, and no selection or segregation of 20 acres out of any of the said association claims has been indicated.

Upon the great majority (probably nearly 90%) of the Austin locations no actual discovery of mineral other than common salt has been made at the date of the Federal withdrawal of these lands, February 21, 1913. Upon the majority of these claims no discovery has been made even at this date. A discovery after the Federal withdrawal does not validate a location. The finding of common salt or of non-commercial traces of other minerals, does not constitute discovery in this case.

3—THE DOLBEAR LOCATIONS NOT IN GOOD FAITH.

The records indicate that Dolbear and seven associates, each of whom at that time was a stockholder of the California Trona Company were, in making the locations of 1910, not locators in good faith as they pretended to be, but were dummy entrymen who located solely in the interest and on the behalf of the California Trona Company. I submit that these locations are therefore fraudulent and void.

In support of the considerations urged in the preceding paragraphs I submit herewith :

- A—Statement of E. E. Free, 1105 Madison Avenue, Baltimore, Maryland, dealing with the history of the Searles Lake property and certain physical matters relating thereto.
- B—Memorandum citing the records of San Bernardino County, California, relating to the alleged locations at Searles Lake.
- C—Opinion of J. P. O'Brien, attorney-at-law, Mills Building, San Francisco, California, upon the alleged claims of the California Trona Company at Searles Lake, and including a description of the physical conditions of the Searles Lake deposit.
- D—Opinion of Hugh H. Brown, attorney-at-law, Tonopah, Nevada, upon the proposed plan of Federal leasing of such deposits, and dealing with the attempts of private parties to acquire the Searles Lake deposit by location.

I submit further as bearing directly upon this matter, that there has passed the Federal House of Representatives and is now pending in the Senate a bill providing for the disposal of lands similar to those at Searles Lake through leases by the Federal Government in limited units and under such regulations as will insure proper operations and prevention of monopoly. The mining men, attorneys and engineers who under the corporate name of Railroad Valley Company, of Nevada, have studied the potash subject

for over three years past and have expended nearly \$150,000 thereon, are unanimously of the opinion that a system of Federal leases is the only practicable solution of the potash land question. A reasonable Federal leasing plan would offer a fair reward to the private capital and enterprise which assumes the great risks incident to the creation of a new industry of this type, while fully protecting the public against possible monopoly. We believe, however, that the Federal lease should be for a larger unit than is provided by the bill now pending in the Senate, and that with proper Federal regulation and control, the larger unit would work to public advantage.

The California Trona Company (including the American Trona Corporation, which is the operating concern) has made and contemplates making a very large investment at Searles Lake, and is doing an important and useful work in establishing an American potash industry which will also produce borax and soda. But I respectfully submit that its present and future investment would be amply protected and its equitable rights in the premises would be fully recognized, by giving to it a first choice of Federal leases that may be granted at Searles Lake. To allow the California Trona Company more than such a Federal lease would promote monopoly, with resultant injury to the general public as well as to those particular parties who have expended much money and effort in the search for potash.

These parties, some of whom I represent, have also acquired equitable rights for consideration in the matter of possible Federal leases of known potash lands. This is especially the case in view of the fact that at the time of the commencement of the potash search and subsequently, the Searles Lake property was in possession of the California Trona Company and not open to entry and examination by other parties, although at that time the projects of the California Trona Company were based entirely upon the value of the property as a potential producer of soda and incidently of borax. The presence of potash if known at all,

was merely an academic matter prior to the general search for potash begun in 1911.*

I respectfully request that I be permitted to argue this matter and to be represented by counsel at a public hearing, when the matter reaches your office for decision.

Respectfully,

(Signed) VICTOR BARNDT,
Protestant.

(Address, Tonopah, Nevada.)

Dated, February 1, 1915.

Victor Barndt, being first duly sworn, deposes and says that he is the Protestant named in the foregoing Protest, that he has read the same and knows the contents thereof, and the same is true of his knowledge, and that he has read the four exhibits referred to and attached to this Protest and knows the contents thereof and believes them to be true.

Subscribed and sworn to February 1, 1915, before Ralph S. Sherline, Notary Public, in the city of Washington, District of Columbia.

*See footnote on page 14.

HISTORICAL STATEMENT.

The saline deposits at Searles Lake were discovered by John W. Searles in 1863, but no attempt at utilization was made until about ten years later. In 1873 a part of the deposit was located for borax by Searles and associates, and application for patents (later allowed) was made in 1874. Production of borax commenced in 1874 and continued until the development of the colemanite deposits in the '90s rendered the operation of the Searles Lake property no longer profitable. In 1878 the San Bernardino Borax Mining Company was organized to take over the Searles interests and the patented land at Searles Lake still stands in the name of this Company, now a subsidiary of the Pacific Coast Borax Company, of Oakland, California. Searles and his associates were aware of the presence of soda and other valuable salines on the property, but made no effort to utilize anything except borax.

During the activity of the San Bernardino Borax Mining Company several smaller borax companies operated for brief periods on different parts of the deposit and the Superintendent of one of these, Whitman Symmes, attempted in the late '90s to secure capital for the exploitation of the deposit as a source of saline materials other than borax. The attempt was unsuccessful.

About ten years later (prior to 1908) C. E. Dolbear became interested in the possibilities of the deposit as a source of soda and arranged for financial support, resulting in the organization in February, 1908, of the California Trona Company, a California corporation with its offices at Oakland, California, and having a capital stock of 1000 shares of a par value of \$1000 each. On January 1, 1908, Dolbear located the property in more than 250 association placer claims of 160 acres each, in the names of himself and seven others. On January 7, 1908, the seven associates transferred their interests to Dolbear, and on February 21, 1908, Dolbear transferred the locations to the newly organized California Trona Company. On November 5, 1908, the California Trona Company obtained from the San Bernardino Borax Mining Company a restricted lease on the 2240 acres of patented land belonging to the latter Com-

pany, for a period of five years, with the right of renewal for a second period of five years.

In order to obtain capital for development, including the completion of a soda works, the California Trona Company made, on August 1, 1908, and November 5, 1908, with the Foreign Mines Development Company of London, England, contracts providing for a loan of \$50,000 or more, secured by a mortgage on the Searles Lake property. The Foreign Mines Development Company is a subsidiary of the Consolidated Gold Fields of South Africa. As consideration for making the loan, the California Trona Company gave the Foreign Mines Development Company 100 shares of the capital stock of the former Company and agreed that the Foreign Mines Development Company should receive a percentage of the gross sale value of the products of the property for a certain time.

The soda plant was not successful and much trouble arose between the representatives of the California Trona Company and the Foreign Mines Development Company, involving charges of incompetence, fraud and conspiracy on both sides. On September 7, 1909, the Foreign Mines Development Company began action to sell out the property for the debt. This was contested by the California Trona Company and on September 27, 1909, the case was transferred to the United States District Court, Ninth District of California. On December 16, 1909, this Court appointed S. W. Austin as Receiver and since that date Austin has been in possession of the property. In this action the Foreign Mines Development Company sought and obtained judgment for more than \$100,000 money loaned to the California Trona Company, for more than \$100,000 in profits from a stipulated production which did not materialize, and for money advanced and costs; the whole aggregating more than \$250,000. The findings of the Master in the case were filed with the Court January 28, 1911, but the Court's decree and order for sale was not issued until February 10, 1913. Since that date no action has been taken in the matter. Concurrently with the foreclosure proceedings the Foreign Mines Development Company sued for and obtained a decree holding the individual stockholders of the California Trona Company liable for the debt.

Meanwhile, by a series of transactions during 1909, 1910 and 1911 representatives of the Foreign Mines Development Company had obtained a majority of the stock of the California Trona Company and the control of the Board of Directors of that Company. On November 8, 1911, this Board sold out nearly all of the minority stock of the California Trona Company for alleged non-payment of an assessment. These transactions have led to a large number of actions in the California Courts, some of which are still pending. Among other matters the legality of the transactions leading to the sale of the minority stock of the California Trona Company has been and is being contested, first by C. E. Dolbear and later by E. H. Merrill, of San Francisco, and others representing some of the minority stockholders.

During this period and in advance of the realization of the value of the property for potash, many efforts were made by the California Trona Company either to sell the property for a moderate sum, or to raise money with which to pay off the claims of the Foreign Mines Development Company and to provide for operation. From February, 1910, until July 1, 1911, E. H. Merrill held a valid option, ratified by a large majority of the stock, to sell the property at a price to net \$800,000. This option was extended beyond July 1, 1911, by an alleged Board of Directors opposed to the Foreign Mines Development Company, but the validity of this extension is in controversy. On December 6, 1911, the Board of Directors representing the stock controlled by the Foreign Mines Development Company, authorized Guy Wilkinson, then Managing Director of the latter Company, to sell the property at any price that would pay the debt of the California Trona Company. In connection with these or other efforts at sale or re-financing, technical examinations of the property were made by representatives of the Solvay Process Company, by Smith-Emery and Company, of San Francisco, by S. P. Sadtler and Son, of Philadelphia, and others. No sale or re-financing was effected by any of these efforts.

During this time no effort was made to patent any of the property. Until August, 1910, the title of the Califor-

nia Trona Company rested upon the original locations made by Dolbear and seven others in January, 1908. During July, 1910, Dolbear and seven others, all stockholders of the California Trona Company, relocated the property in 257 association placer claims of 160 acres each, known as Trona No. . . . , Letter These claims were recorded on August 8, 1910, and transferred to the California Trona Company on August 11, 1910.

During October, 1910, T. W. Pack and seven others located a large part of the property in 175 association placer claims of 160 acres each, known as Soda No. These parties were represented by H. E. Lee, of San Francisco, and T. O. Toland, of Los Angeles, as attorneys, and by Rasor and Valjean, of Los Angeles, as engineers. It was claimed that the locations of Dolbear and his associates in 1908 and 1910 were fraudulent and void because made by dummy entrymen. These adverse locations are commonly known as the Lee-Pack claims and were the cause of the sensational "potash war" which attracted so much attention in the California newspapers during the winter of 1912-13 and later. Several actions to determine the rights of the parties to this conflict are now pending in the California Courts, perhaps the most important being an Adverse (San Bernardino County Sup. Ct. No. 13274) filed by R. Waymire and D. Smith (two of the locators) against the first application for patent filed by the California Trona Company June 23, 1913, and covering six of the association placer claims under the Dolbear locations of July, 1910. Since the filing of this Adverse, parties supposed to be acting in the interest of the California Trona Company have acquired the interests of D. Smith and one other locator, being together a one-fourth interest in the Lee-Pack claims as a whole.

During May and June, 1912, following the demonstration of the importance of potash in the deposit, S. W. Austin, Receiver of the California Trona Company, located the entire supposed valuable portion of the deposit as 1392, more or less, 20 acre placer claims, in his own name. On November 12, 1912, he transferred these claims to the California Trona Company.

On February 21, 1913, all public mineral land on the Searles Lake deposit, not then covered by valid locations, was withdrawn from entry by Presidential order. This withdrawal is still in force.

In the fall of 1914 the California Trona Company filed two additional applications for patents; the first for one association placer claim under the Dolbear location of July, 1910, the second for four 20 acre placer claims under the Austin locations of 1912. There are no adverse claims to any part of the land covered by these applications for patent.

It is impossible to assign with any certainty the credit for the first discovery of potash at Searles Lake. During the control of the property by John W. Searles an examination was made by C. N. Hake and it is said that he was the first to recognize the presense of potash and its possible importance. From the recollections of his surviving associates, it seems probable that John W. Searles himself knew of the presence of potash in the deposit quite early in the history of his work with the property. Its presence was undoubtedly known to the mineralogists and chemists who examined the samples from the deep wells drilled by Searles in 1887 and 1895, and was probably known later to Symmes and to Dolbear. It appears, however, that all projects for the utilization of the property prior to the summer of 1911 were directed exclusively toward the recovery of borax or soda, and that the presence of potash, if known, was regarded as commercially unimportant.*

During the winter of 1910-11 there arose much agitation and public interest concerning the dependence of the United States upon the German mines for the supply of potash, and this resulted in considerable general activity in prospecting for this substance. The United States Geological Survey and the United States Bureau of Soils both took up the matter and after preliminary investigation of possi-

*The Solvay Process Company, in the course of its examination during the summer of 1910, determined the existence of commercial amounts of potash at Searles Lake and made experiments in extracting and refining the various minerals. These facts were unknown to the California Trona Company, and have never heretofore been published.

bilities both Bureaus began active work in the spring of 1911. These investigations are still in progress. This governmental activity and the great public interest in the matter also induced a search for potash by many private parties, of whom the chief, in magnitude of operations undertaken, was the Railroad Valley Company, of Nevada. The field operations of this Company began in the spring of 1911 and extended until June, 1914. Important investigations have been carried out also by the Pacific Coast Borax Company and the Solvay Process Company.

The general interest and activity in the search for potash was not without effect on the Searles Lake situation. In the spring of 1911 Smith-Emery and Company, of San Francisco, had made an investigation of the property on behalf of outside capitalists, in the course of which investigation they collected and analyzed a large number of samples. Originally these samples were not tested for potash, but after the growth of general interest in that material a single brine sample was analyzed and found to contain 4.49 per cent. of potassium chloride. Knowledge of this analysis came to the two Government Bureaus interested in the potash search and representatives of these Bureaus examined the property on March 5-7, 1912. On March 21, 1912, the two Bureaus issued simultaneous bulletins giving the results of the field examination and announcing that the deposit had been found to contain a large amount of potash believed to be in commercial form.

Though in no sense a "discovery" of the potash, the estimate by the governmental officers was the first adequate study of the deposit from that point of view and was probably the first definite proof of the existence therein of potash in commercial quantity and character. With the acceptance by all parties concerned of the essential correctness of the governmental estimate, efforts to dispose of the property ceased immediately and the California Trona Company began serious efforts toward development and operation. These efforts have been continued without important interruption and are stated to have resulted in the development of a successful process for the extraction and refining of the valuable salts.

In June, 1913, there was organized the American Trona Corporation, a Delaware corporation, having an authorized capital of \$12,500,000 and financed mainly by the Consolidated Gold Fields of South Africa. The American Trona Corporation now owns the majority of the stock of the California Trona Company and holds and operates the Searles Lake property under contract with the California Trona Company. The American Trona Corporation has constructed and is operating an experimental refining plant, and, through a subsidiary corporation, has constructed the Trona Railway from the plant to the Southern Pacific Railway at Searles Station, 48 miles north of Mojave.

Up to the present time the deposit at Searles Lake is the only known source of potash within the United States, the commercial importance of which can be considered established or strongly indicated. Furthermore, the desert regions of the United States have been so fully and carefully examined that the existence of another deposit of the Searles Lake type must be considered extremely doubtful. It remains possible that buried deposits of similar character exist somewhere, but extensive borings in several of the most probable areas have failed to disclose any such buried deposit. Much money has been spent in the effort to produce useful potassium compounds from feldspar, alunite and sea kelp, but so far none of these projects has come to commercial success.

The only valuable portion of the Searles deposit, so far as is now believed, is the brine which permeates the salt body. Essentially this is a lake of brine, the salt body itself being no more than a loose skeleton of crystals in the interstices of which lies the valuable brine. This brine will flow quite freely through the salt body and it is probable that a well sunk anywhere in the main brine area would draw its supply, if pumped, to some extent from the whole deposit.

The important salts present in the brine are potassium chloride, sodium carbonate (and bicarbonate), borax, sodium chloride and sodium sulphate. Only the first three are regarded as commercially important.

(Signed) E. E. FREE.

Baltimore, Maryland, January 30, 1915.



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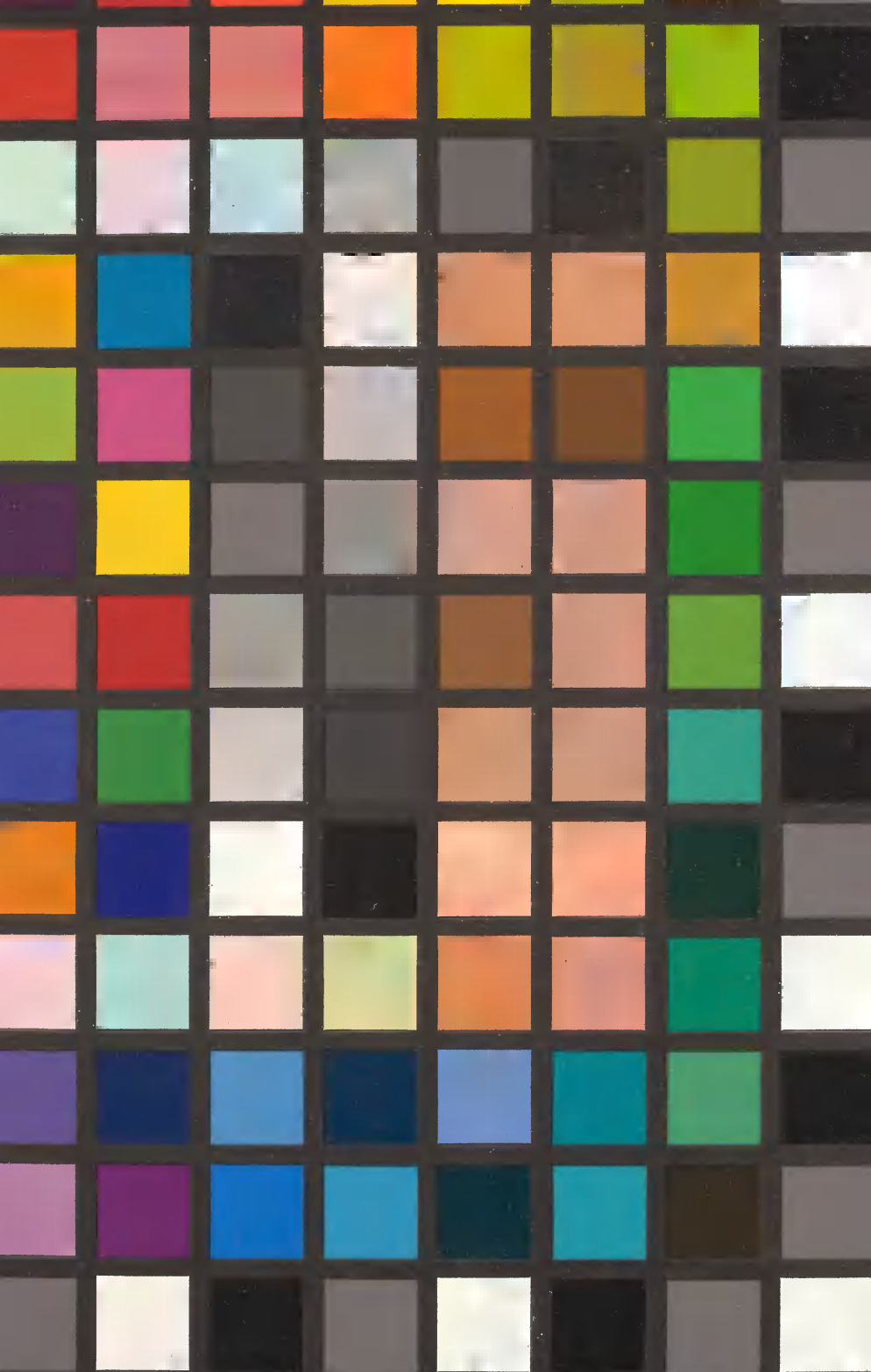
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